IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13123 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FRIENDS LAND DEVELOPMENT CO - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MEHUL S SHAH for Petitioner(s) : 1,MR SURESH M SHAH for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 21/06/2006

ORAL JUDGMENT

1. The short facts of the case are that the petitioner, which is a partnership firm purchased the property bearing Survey No. 84/2

admeasuring 4 Acre and 23 Gunthas at village Khanderi-Tal.Padadhari from Ahir Naranbhai Laxmanbhai, who was an agriculturist. It appears that the transaction had taken place by Registered Sale Deed No. 4000 dated 19.05.1980. Based on the said transaction, entry No. 277 was mutated on 06.07.1981 in the revenue record. It appears that on 30th March, 1991, a show-cause notice came to be issued under Saurashtra Gharkhed Ordinance, 1949(hereinafter referred to as 'Ordinance') for cancellation of the entry on the ground that the land is transferred to a partnership firm, which is non-agriculturist. The Assistant Collector, who issued the notice ultimately on 24.07.1991 passed the order cancelling the entry on the ground that the transaction is illegal. It appears that the matter was carried in revision before the District Collector and the District Collector as per the decision dated 13.05.1993, dismissed the revision. The District Collector further passed the order of forfeiture of the land to the Government. The matter was carried before the Revenue Tribunal in Revision being No. TNBR 40/93 and the said revision also came to be dismissed on 12th September, 1994. It is under these circumstances, the petitioner has approached to this Court.

2. Heard Mr. Shah, learned counsel appearing for the petitioner and Mr. Mengdey, learned AGP for the State. Mr. Shah, learned counsel appearing for the petitioner has mainly raised three

contentions; first one is on the question of delay, second is is that the partnership firm was an agriculturist and the third is that out of 9 partners of the firm, 4 partners were agriculturist on the date of the transaction and the prayer was made before the lower authority to give the option for relinquishment of the rights by the other five persons who were non-agriculturist, so that the land may remain with the firm of the agriculturist only. He submitted that such aspect is not properly considered by the Tribunal.

3. There is no dispute on the point that the power for cancellation of the entry is exercise after about 10 years. There is also no dispute on the point that the partnership firm which has purchased the property is not an agriculturist. The only contention raised on behalf of the petitioner is that the partnership firm had purchased another agricultural land bearing Survey No. 440 for which, permission was granted by the District Collector. However, the perusal of the order of the District Collector shows that the permission came to be granted only on 20.08.1980, whereas the entry in question had taken place on 19.05.1980 and therefore the said contention is rightly negatived by the lower authorities.

4. As such, if the matter is further examined on the ground of delay, the facts and circumstances of passing of 10 years may operate against the

State Government, more particularly, in view of the decision of the Division Bench of this Court in the case of **Valjibhai Jagjivanbhai Vs. State of Gujarat reported at 2005(2) GLH 34**, since the power is exercised after a period of about 10 years. However, I find that it may not be required by this Court to conclude on the aspects of delay in view of the peculiar facts and circumstances of the present case inasmuch as some of the partners of the firm, as contended by the petitioner, are agriculturist. If the transaction has taken place with the firm, comprising of its partners, who are all agriculturist, the transaction may not be hit by the provisions of Section 54 of the Ordinance. The reference may be made to the decision of this Court in the case of **Bechar Arjan & Co. Vs. Assistant Collector reported at 1996(3) GLD 705**.

5. It does appear from the record that the submissions were made by the learned counsel appearing for the petitioner before the Tribunal that the option may be given for relinquishment of the rights by the partners who are non-agriculturist and the land may continue with the firm of the persons who are agriculturist. It appears that neither the District Collector nor the Tribunal has examined the aspects as to what is the status of the persons who are partners of the firm. The partnership firm is not a legal entity and therefore, the land held by the partnership firm could be said as a land held by

its partners. It was required for all the authorities below to examine as to whether the partners of the partnership firm are agriculturist or not. In the present case, there was the contention raised before the lower authority, but it appears that since that aspect is not examined, no opportunity was given to the petitioner to produce the authenticated record for showing that any of the partners of the firm were agriculturist or not. If some of the partners of the firm were agriculturist, instead of cancelling the entry based on the transaction in toto and further order of eviction, the principles of equity may require that the opportunity is given to the partners for relinquishment of the rights in the firm by the partners who were non-agriculturists so that the land may remain with the firm of the agriculturist only. Under such circumstances, no useful purposed would be served in evicting the bonafide purchaser of the genuine transaction creating the situation in favour of the seller of the land, who has already pocketed the consideration and parted with the land. As such, under the ordinance, there is power of eviction in a matter where the land is purchased by non-agriculturist and there is no express power for forfeiture of the land to the Government. Therefore, consequently, if the transaction is set aside or the occupant who has purchased the land by paying consideration is evicted from the land in question, the beneficiary would be the seller who has pocketed

the sale consideration. Therefore, I find that in such circumstances, it was required for the lower authorities to examine the aspects as to whether any of the partners of the firm were agriculturist and if yes, the option could have been given for relinquishment of the right in the firm by the non-agriculturist partners and consequently the land can be allowed to be retained with the agriculturist. I am inclined to take such view because the paramount intention of the legislature is to see that the land remains with the agriculturist and if such an option is given, the purpose and intention of the legislature would be substantially fulfilled.

6. As it was declared before the lower authority on behalf of the petitioner that four partners amongst nine partners were the agriculturist at the relevant point of time when the land was purchased by the partnership firm, the inquiry will be required to be undertaken by the authority and if ultimately it is found that some of the partners of the partnership firm were agriculturists at the relevant point of time, the option may be given to the petitioner firm for relinquishment of the rights by the partners who are non-agriculturist and the matter may be considered for retaining of the land by the firm whose all partners are agriculturists, in light of the observations made by this Court in case Behram Arjan & Co. (Supra). In the event the option is not

accepted, consequential order may be passed.

7. In view of the aforesaid observations and discussions, I find that since the inquiry will be required to be undertaken and the question of giving consequential option may also arise, the matter deserves to be remanded to the lower authority for examination of the aforesaid aspects and to pass the consequential order.

8. In the result, the impugned orders passed by the lower authorities viz. The Gujarat Revenue Tribunal, Assistant Collector and the Collector, are quashed and set aside with the direction that the matter shall stand restored to the Assistant Collector and the Assistant Collector shall examine the matter in light of the observations and the discussions made hereinabove and shall pass the consequential order after giving opportunity of hearing to the petitioner as early as possible preferably within a period of six months from the receipt of the order of this Court. Till the aforesaid exercise is completed, the *status quo* qua the possession of the land in question shall be maintained by the petitioner.

9. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

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